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99TH CONGRESS
2d Session

SENATE

REPORT
99-431

INTERCIRCUIT PANEL OF THE UNITED STATES ACT

SEPTEMBER 3, 1986.—Ordered to be printed

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Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 704, as amended]

The Committee on the Judiciary to which was referred the bill (S. 704), to establish an Intercircuit Panel of the United States, reports favorably on such legislation, with amendments thereto, and recommends that the bill as amended do pass.

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I. STATEMENT

Over the past several decades, the Federal judiciary of the United States has experienced a dramatic increase in size and caseload. The growth of the judiciary has occurred as our society has become an increasingly litigious one, and as Congress has enacted legislation in many new and complex areas. During the past decade and a half alone, Congress has enacted more than 100 statutes enlarging Federal court jurisdiction.

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In order to meet the increasing demands upon the judiciary, since 1950, Congress has increased the number of Federal district judges from 211 to 758 and the number of circuit court of appeals judges from 65 to 226. These increases have helped to ease the burden in the Federal district and circuit courts. Little has been done, however, to ease the burden that has been placed on the Supreme Court, which continues to operate at its original, nine-member size. Today, all of the 984 Federal court judges, as well as 27,000 State court judges, are deciding cases which are potentially subject to review by the Supreme Court.

In 1953, there were 1,463 cases on the docket of the Supreme Court. In 1984, there were more than 5,000 cases on the docket. Over the same period, the number of signed opinions increased from 65 to 139.

For more than a dozen years, the problem of a severely overcrowded Supreme Court docket has been the subject of considerable attention and discussion. Several major independent commissions have studied the issue and have concluded that a new tribunal is needed to reduce the burdens increasingly coming to bear on the Supreme Court.

In 1972, a Study Group on the Case Load of the Supreme Court, known as the Freund Committee,[1] urged that a permanent appellate tribunal be added between the Courts of Appeals and the Supreme Court. In 1975, the congressionally created Commission on Revision of the Federal Court Appellate System, known as the Hruska Commission,[2] also concluded that an appellate tribunal between the Courts of Appeals and the Supreme Court was imperatively needed.

This legislation would establish, for a 5-year trial period, such a tribunal to be known as the "Intercircuit Panel of the United States." The Panel would be composed of 13 U.S. circuit court judges, one from each circuit, to be selected by the active judges of the circuit. Members of the Panel could be active, or senior status, judges.

Meeting biannually in Washington, D.C., the Panel would serve as a court of limited jurisdiction, reviewing only those cases referred to it by the Supreme Court. The Supreme Court would only be authorized to refer to the Panel those cases in which it has found to exist a conflict with the determination of another circuit.

The Supreme Court would have discretion in selecting the cases for resolution by the Panel and would retain authority after the Panel decides a case to grant further review in the case when it deems such review appropriate. It is expected that the Panel will generally operate under the same rules and procedures, and parties will enjoy the same rights, that apply in cases under review of the Supreme Court.

In 1984, of the 139 cases in which the Supreme Court tendered signed opinions, 52, or 37 percent, of these cases involved conflicts among the circuits. It is expected, therefore, that the caseload of

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[1] The Freund Committee was so-named after its Chairman, Professor Paul Freund of the Harvard Law School.

[2] The Hruska Committee was so-named after its Chairman, Senator Roman Hruska of Nebraska.

the Supreme Court would be reduced significantly through referral of a majority of these cases to the Panel.

The proponents of S. 704 are sensitive to the concerns of those who fear any institutional or structural change in our judicial system. However, as the Chief Justice of the United States, Warren E. Burger, a strong supporter of an intercircuit panel, has stated,

> Why is it so difficult to grasp the reality that just as we need more police and more courts to deal with automobile traffic than we did 75 years ago when there were very few automobiles, we need something more to deal with the avalanche of cases coming to the Supreme Court. The same question can be put as to the increase in the complexity of our social and economic structure—and the enormous increase in crime.
>
> It is elementary that when the "input"—that word of the computer age—into any system is increased—when there are more "customers"—one of two things must happen:
>
> (a) The mechanisms to deal with the increased flow must be adjusted, or
>
> (b) The "output" mechanism must be enlarged or made more efficient.
>
> We have already done everything practicable to meet these problems. Courts of Appeals and some of the larger District Courts now have trained court administrators to allow more efficient use of judicial time. We now use modern word processing equipment and computerized recordkeeping. More law clerks, secretaries, and staff have been added. The courts have begun to impose sanctions on attorneys who bring frivolous cases or abuse judicial processes. We will see more of this.
>
> Everywhere throughout the system there have been great improvements in how cases are processed. It is ironic that the very efficiencies that have been achieved in District and Circuit Courts simply bring more cases sooner to the Supreme Court. Today the judges of the Federal system at every level are disposing of more cases per judge each year than at any other time in history.[3]

The Committee believes creating the panel to be the most effective and least offensive solution to this problem. Under the bill, the Panel would be utilized—to the extent desired by the Supreme Court for a period of 5 years. Congress would, of course, have the option to reauthorize the Panel, with or without changes, after a careful assessment of its impact on the Supreme Court and the entire judicial system. Should the Supreme Court become dissatisfied with the effectiveness of the Panel at any point in the 5-year period, it could terminate the Panel simply by deciding not to send any additional cases to the Panel.

At a time when fiscal restraint is especially critical in all endeavors of the Federal Government, it is important to note that es-

[3] Annual Message On The Administration Of Justice From Warren E. Burger, Chief Justice Of The United States, at the Midyear Meeting of the American Bar Association. Detroit, Michigan. February 17, 1985.

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tablishment of this Panel would not entail exorbitant costs. It would not create any permanent bureaucracy. All support staff needs of the Panel would be fulfilled by existing staffs of the Court of Appeals for the Federal Circuit or the Supreme Court. Costs would primarily be limited to those related to travel and accommodations of Panel judges during their biannual sessions.

Changes in the structure of the judicial system must be made with great care, and only after deliberate and thoughtful study. However, the problem of an overloaded Supreme Court docket has now been under consideration for many years. We can no longer afford to stand idly by while our Nation's highest court loses its ability to painstakingly select, research, discuss and decide the most weighty legal questions of our time. The time has come for action.

II. Legislative History of the Intercircuit Panel

A. 97th Congress

On October 15, 1981, Representative Kastenmeier, along with Representatives Rodino, Railsback, and Butler, introduced H.R. 4762, the proposed "Intercircuit Tribunal of the United States Court of Appeals Act." This bill was referred to the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary. Additional bills, proposing an Intercircuit Tribunal of the United States Court of Appeals, were introduced by Representative Butler. Those bills, H.R. 7294, and H.R. 7349, were introduced on October 1, 1982 and December 2, 1982, respectively, and were referred to the Subcommittee on Monopolies and Commercial Law of the House Committee on the Judiciary.

No further legislative action occurred on these bills in the 97th Congress.

B. 98th Congress

On March 8, 1983, Representative Kastenmeier introduced H.R. 1970, the proposed "Intercircuit Tribunal of the United States Court of Appeals Act." Subsequent hearings were held on April 27, 1983, before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary.

Although the Subcommittee on Courts, Civil Liberties, and the Administration of Justice approved the bill, with amendments, on September 13, 1984, no further legislative action on H.R. 1970 was taken during the 98th Congress.

On February 2, 1983, Senator Howell Heflin introduced S. 382, a bill to establish a National Court of Appeals. S. 382 was referred to the Subcommittee on Courts of the Senate Committee on the Judiciary.

No further legislative action was taken on S. 382 during the 98th Congress.

On March 1, 1983, Senator Robert Dole, along with Senators Heflin and Thurmond, introduced S. 645, a bill which, in part, proposed the establishment of an intercircuit tribunal.

Hearings on S. 645 were held before the Subcommittee on Courts on March 11, 1983. The following witnesses testified at the hearing:

Honorable Johnathan C. Rose, Assistant Attorney General, U.S. Department of Justice;

Judge J. Clifford Wallace, U.S. Court of Appeals for the Ninth Circuit;

Chief Judge Frank A. Kaufman, U.S. District Court, District of Maryland, on behalf of the Federal Judges' Association;

Herbert E. Hoffman, on behalf of the American Bar Association;

Leo Levin, Director, Federal Judicial Center;

Professor Paul A. Freund, Harvard Law School;

Senator Roman L. Hruska, of Kutak, Rock and Huie, Omaha, Nebraska;

Chief Judge Lawrence H. Cooke, State of New York, on behalf of the Conference of Chief Judges and Conference of State Court Administrators;

Justice Robert F. Utter, Supreme Court of the State of Washington, and Chairman, Committee on State Justice Institute Act.

An additional day of hearings on S. 645 was held on April 8, 1983. The following witnesses testified at the hearing:

Elmo B. Hunter, U.S. District Court Judge, Western District of Missouri, and Chairman, Committee on Court Administration, Judicial Conference of the United States;

Maurice Rosenberg, Harold R. Medina Professor of Procedural Jurisprudence, Columbia University of Law School;

Daniel J. Meador, James Monroe Professor of Law, University of Virginia Law School.

On June 29, 1983, the Subcommittee on Courts approved S. 645 with an amendment in the nature of a substitute.

No subsequent legislative action was taken on S. 645 during the 98th Congress.

C. 99TH CONGRESS

On February 26, 1986, Representative Kastenmeier, along with Representatives Mazzoli, Frank, Boucher, Hughes, Smith of Florida, Kindness, Whitehurst, Towns, and Martinez, introduced H.R. 4238, the proposed "Intercircuit Tribunal of the United States Court of Appeals Act." The Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary held hearings on H.R. 4238 on February 27, 1986.

No further legislative action has been taken on H.R. 4238 to date.

III. Legislative History of S. 704 and Explanation of Amendments and Committee Action

On March 20, 1985, Senator Strom Thurmond introduced S. 704, a bill to establish an Intercircuit Panel of the United States Court of Appeals. Senator Thurmond was joined by Senators Heflin, Dole, Simpson, Laxalt, Hatch, Denton, Specter, McConnell, DeConcini and Hatfield as original cosponsors. Senators Cochran and McClure were subsequently added as cosponsors.

A hearing was held before the Subcommittee on Courts of the Senate Committee on the Judiciary on October 9, 1985. The following witnesses testified at the hearing:

Honorable James M. Spears, Acting Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice;

Honorable Ralph K. Winter, Circuit Judge, U.S. Court of Appeals for the Second Circuit;

Honorable Patricia M. Wald, Circuit Judge, U.S. Court of Appeals for the District of Columbia;

Honorable Harry T. Edwards, Circuit Judge, U.S. Court of Appeals for the District of Columbia;

Honorable Ruth Bader Ginsburg, Circuit Judge, U.S. Court of Appeals for the District of Columbia;

Honorable Pierce Lively, Chief Judge, U.S. Court of Appeals for the Sixth Circuit;

Honorable Roman L. Hruska, of Kutak, Rock, and Campbell. Omaha, Nebraska;

Honorable Daniel J. Meador, Professor of Law, University of Virginia;

A. Leo Levin, Director of the Federal Judicial Center;

Professor John Sexton, Professor of Law, New York University.

On October 30, 1985, S. 704 was considered by the Subcommittee on Courts. At that time, the bill, without amendment, was approved for consideration by the full Judiciary Committee by a vote of five to one. Senators voting in the affirmative were Thurmond, Simpson, Laxalt, Heflin, and DeConcini. Senator East cast a negative vote.

On April 17, 1986, the Senate Judiciary Committee began consideration of S. 704. The bill was debated, but no votes were taken at that meeting.

On May 15, 1986, the Judiciary Committee was scheduled to continue consideration of S. 704. However, because a quorum could not be obtained, only informal discussion about the bill took place.

On June 12, 1986, S. 704 was approved, with amendments, by the Judiciary Committee.

Senator John East proposed, and the Committee accepted by voice vote, an amendment limiting the cases which could be referred to the Panel to those cases in which the Supreme Court has found to exist a conflict with the determination of another circuit. The amendment read:

> Amend Section 4(a)(1) of S. 704 on page 5 by inserting in line 24 between the word "case" and the word "to" the words "in which it has found to exist a conflict with the determination of another circuit of the United States Courts of Appeals."

Senator Dennis DeConcini proposed, and the Committee accepted by a vote of 9 yeas and 8 nays, an amendment providing that the Panel would be composed of 13 U.S. Circuit Court judges, one from each circuit, to be selected by the active judges of the circuit. The amendment read:

On page 2, strike out lines 5 through 22 and insert in lieu thereof the following:

"(a)(1) There shall be established an Intercircuit Panel of the United States Courts of Appeals composed of thirteen judges. The active judges of each circuit shall designate one judge in either active or senior status to serve on the Intercircuit Panel. The active judge who is senior in years of service of those judges so designated shall serve as presiding judge of the Intercircuit Panel.

"(2) For the original designations, the terms of the panel members shall be chosen by lot with each of the first five members chosen serving for a period terminating on the date four years after the date of the first referral pursuant to section 1260(a), four judges to serve for a period terminating three years after such date, and four judges to serve for a period terminating two years after such date. Thereafter the circuit court of appeals shall designate judges to serve on the Panel for terms of three years. All terms shall commence on the date of such designation."

On Page 3, strike out lines 16 through 21 and insert in lieu thereof the following:

"(e) In the event of the death, resignation, or disability of any judge designated under subsection (a), the active circuit judges of the circuit of which the judge was a member shall fill the vacancy in accordance with the provisions of subsection (a). A judge designated to fill such a vacancy shall be designated to serve for the remainder of the period of his predecessor's term."

Senator Jeremiah Denton proposed, and the Committee accepted without objection, an amendment providing for an authorization of appropriations of $140,000 to fund the Intercircuit Panel. The amendment read:

On page 9, strike out lines 11 through 13 and insert in lieu thereof the following:

SEC. 7. There are authorized to be appropriated $140,000 for each fiscal year beginning with the fiscal year 1987 to carry out the provisions of this Act.

Senator Strom Thurmond offered, and the Committee accepted without objection, an amendment clarifying that a judge could not hear nor participate in the determination of a case referred to the Panel if the judge had been involved in any phase of the litigation. The amendment read:

On page 3, line 5, delete "as a judge of a court of appeals".

Finally, Senator Thurmond offered, and the Committee adopted without objection, an additional amendment clarifying that the Intercircuit Panel would cease to function upon the disposition of all cases, not appeals, pending in the Panel after 5 years of existence. The language of that amendment is:

On page 9, line 19, delete "appeals," insert in lieu thereof "cases".

After approving these amendments, the Senate Judiciary Committee approved S. 704, as amended, by voice vote. The following Senators requested that they be recorded as voting in the negative: Senators East, Simon, Kennedy, Metzenbaum, Leahy, and Biden.

IV. Section-by-Section Analysis

SECTION 1

Section 1 sets forth the short title of the Act as the "Intercircuit Panel of the United States Act."

SECTION 2

Section 2(a) amends part I of title 28, U.S.C., adding a new chapter 4, including new sections 61, 62 and 63.

New section 61(a)(1) establishes the Intercircuit Panel of the U.S. Court of Appeals. The Panel would be composed of thirteen judges, one each to be chosen from the Federal judicial circuits. The active judges of each circuit would select one judge in either active or senior status to serve on the Panel. (Although not specified, it is intended that the Panel members be chosen by the circuit judges of the circuits. Proponents intend to amend the bill on the Senate floor to make this clear and consistent with the terms of new section 61(e), which describes the manner in which Panel vacancies are to be filled.) Of those selected to the Panel, the active judge who is senior in years of service on the Federal bench would be designated as the presiding judge of the Panel.

New section 61(a)(2) provides that the terms of the original designees to the Panel would be chosen by lot with the judges serving staggered terms. The first five members chosen would serve for 4 years following the date of the first case referral to the Panel. The next four judges chosen would serve 3 years following the referral date and the final four judges chosen would serve for 2 years following such date. Thereafter, the circuit courts of appeals would designate judges to serve on the Panel for 3-year terms. All terms would commence on the date of their designation.

New section 61(b) provides that the Panel would hear and determine cases and controversies.

New section 61(c) provides that a Panel judge would be prohibited from hearing or participating in the determination of any case before the Panel in which the judge previously participated.

New section 61(c) also provides that in the event of a vacancy on the Panel due to previous participation in a case by a Panel judge or due to disqualification of a Panel judge under the provisions of section 455, title 28, U.S.C., a judge shall be designated from among the alternate judges to sit on the Panel. However, although alternate judges would have been created under S. 704 as introduced, an amendment adopted by the Committee established a Panel without alternates. New section 61(c) was not conformed to the amendment. It is anticipated that this provision will be corrected by amendment on the Senate floor.

New section 61(d) provides that the rules of procedure of the Panel would be established by majority vote of the full membership

of the Panel and that such rules must be published before any cases are heard by the Panel.

New section 61(e) provides that in the event of the death, resignation, or disability of any judge serving on the Panel, the active circuit judges of the circuit of which the judge was a member would fill the vacancy in the same manner as the original designee. A judge designated to fill such a vacancy would serve for the remainder of the period of his predecessor's term.

New section 62 provides that the principal office of the Intercircuit Panel would be located in the District of Columbia. However, the Panel would be authorized to hold court at such times and places as determined by its rules.

New section 63 provides that the Intercircuit Panel will have a seal which shall be judicially noticed.

Section 2(b) amends the analysis of part I of title 28, U.S.C., to reflect the addition of new chapter 4 of that part as created by this act.

SECTION 3

Section 3(a) amends part III of title 28, U.S.C. by adding a new chapter 48, entitled the "Intercircuit Panel of the United States Courts of Appeals", and including new sections 731 and 732.

New section 731 provides that the Clerk of the Court of Appeals for the Federal Circuit would perform the duties of clerk of the Panel. Clerical assistance and facilities would be provided to the Panel by the Court of Appeals for the Federal Circuit and by the Supreme Court in a manner mutually agreeable to the Panel, the Supreme Court, and the Court of Appeals for the Federal Circuit.

New section 732 would authorize the Panel to request the services of the marshal of the court of appeals for the judicial district in which the Panel is sitting. The marshal would be directed to attend the sessions of the Panel, to be in charge of all property of the United States used by the Panel, and to perform such other duties as the Panel may direct. The marshal, with the approval of the Panel, would be authorized to request necessary bailiffs from the court of appeals in which the marshal serves. The bailiffs would attend the Panel sessions, preserve order, and perform other necessary duties as the Panel or marshal may direct.

Section 3(b) amends the analysis of part III of title 28, U.S.C., to reflect the addition of new chapter 48 of that part as created by this act.

SECTION 4

Section 4(a)(1) amends chapter 81 of title 28, U.S.C. by adding new section 1260 entitled "Referral to Intercircuit Panel of the United States Courts of Appeals".

New section 1260(a) would authorize the Supreme Court to refer to the Panel any case involving conflicting determinations of two or more circuits of the U.S. Circuit Court of Appeals, before or after granting or denying certiorari, or before or after noting probable jurisdiction of an appeal.

New section 1260(b) provides that all cases referred to the Panel are subject to review by appeal to the Supreme Court in the same

manner as provided in section 1254(1) of title 28 U.S.C. for cases in the courts of appeals generally.

Section 4(a)(2) amends the analysis of chapter 81 of title 28, U.S.C., to reflect the addition of new subsection 1260 of that chapter as created by this act.

Section 4(b)(1) amends part IV of title 28, U.S.C. by adding chapter 82 entitled "Intercircuit Panel of the United States Courts of Appeals", including new sections 1271 and 1272.

New section 1271 confers to the Panel jurisdiction over all cases referred to it by the Supreme Court.

New section 1272(a) authorizes the Panel to deny review of any case referred to it which is subject to review by writ of certiorari unless the Supreme Court directs the Panel to decide the case.

New section 1272(b) provides that decisions of the Intercircuit Panel, unless modified or overruled by the Supreme Court, will be final and binding on all Federal courts, and with respect to questions arising under the Constitution, laws, or treaties of the United States, on all other courts. Excepted from this provision are decisions denying review under new section 1272(a).

Section 4(b)(2) amends the analysis of part IV of title 28, U.S.C., to reflect the addition of new chapter 82 of that part as created by this Act.

SECTION 5

Section 5(a) amends section 1913 of title 28, U.S.C., to make applicable to the Panel the amounts of fees and costs to be charged and collected by the courts of appeals, as prescribed by the Judicial Conference of the United States.

Section 5(b) amends the item relating to section 1913 of title 28, U.S.C., in the analysis of chapter 123 of such title to include the Panel.

Section 5(c) amends section 2072 of title 28, U.S.C., to apply the Federal rules of civil procedure to the Panel.

Section 5(d) amends section 2106 of title 28, U.S.C., to provide that the Panel is authorized to dispose of cases in the same manner as the Supreme Court or any other court of appellate jurisdiction.

SECTION 6

Section 6(a) amends section 604(d) of title 28, U.S.C., by adding a new subsection (5) requiring the Director of the Administrative Office of the U.S. Courts, under the direction of the Judicial Conference, to present to Congress on an annual basis, statistics and other information reflecting the caseload of the Panel.

Section 6(b) would require the Panel, in consultation with the Director of the Administrative Office of the U.S. Courts, to submit to the Supreme Court, the Judicial Conference of the United States, the President, and Congress a comprehensive report on its activities since enactment of this legislation. This report would be required to be filed no later than 4 years after the date on which the first case referral is made to the Panel.

SECTION 7

Section 7 authorizes $140,000 to be appropriated at the beginning of each fiscal year beginning with fiscal year 1987 to fund the Panel.

SECTION 8

Section 8(a) mandates that this act and the amendments made by this act will become effective upon the date of enactment.

Section 8(b) provides that this act and the amendments made by this act will cease to be effective upon the final disposition of any cases pending before the Panel on the date 5 years after the date on which the first case referral is made to the Panel.

Section 8(c) provides that no new case referrals may be made to the Panel on or after the date which falls 5 years after the date on which the first case referral is made to the Panel.

V. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 19, 1986.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate,
Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 704, the Intercircuit Panel of the United States Act.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

RUDOLPH G. PENNER, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 704.
2. Bill title: Intercircuit Panel of the United States Act.
3. Bill status: As ordered reported by the Senate Committee on the Judiciary, June 12, 1986.
4. Bill purpose: S. 704 would create an Intercircuit Panel of the United States Courts of Appeals to which cases would be referred by the Supreme Court when it finds a conflict among determinations of different circuits. This panel would consist of thirteen judges, with one chosen from each circuit. Its principal office would be in the District of Columbia, with support provided by the clerk of the Court of Appeals for the Federal Circuit, the Supreme Court, and the marshal of the Court of Appeals for the judicial district in which the panel is sitting.
5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization level	0.1	0.1	0.1	0.1	0.1
Estimated outlays	0.1	0.1	0.1	0.1	0.1

The costs of this bill fall within budget function 750.

Basis of Estimate: S. 704 authorizes appropriations of $140,000 for each fiscal year beginning with 1987 to carry out the provisions of the act. For the purposes of this estimate, it is assumed that the full amounts authorized will be appropriated. The outlay estimate is based on historical spending rates for similar activities.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Marjorie Miller.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

VI. Regulatory Impact Statement

In compliance with paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the Committee, after due consideration, concluded that this bill will not have any regulatory impact.

VII. Changes in Existing Law

In compliance with paragraph (12) of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 704 are as follows: Existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

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CHAPTER 4—INTERCIRCUIT PANEL OF THE UNITED STATES COURTS OF APPPEALS

Sec.
61. Establishment and composition of Intercircuit Panel.
62. Principal office and sessions.
63. Seal.

§ 61. Establishment and composition of Intercircuit Panel

(a)(1) There shall be established an Intercircuit Panel of the United States Courts of Appeals composed of thirteen judges. The active judges of each circuit shall designate one judge in either active or senior status to serve on the Intercircuit Panel. The active judge who is senior in years of service of those judges so designated shall serve as presiding judge of the Intercircuit Panel.

(2) For the original designations, the terms of the panel members shall be chosen by lot with each of the first five members chosen serving for a period terminating on the date four years after the date of the first referral pursuant to section 1260(a), four judges to serve for a period terminating three years after such date, and four judges to serve for a period terminating two years after such date. Thereafter the circuit court of appeals shall designate judges to serve on the Panel for terms of three years. All terms shall commence on the date of such designation.

(b) Cases and controversies shall be heard and determined by the Panel.

(c) No judge shall hear or participate in the determination of any case referred to the Panel in which such judge previously participated. In the event of a vacancy on the Panel caused by a judge disqualifying himself under this subsection, or under section 455 of this title, or caused by the absence of any judge designated to sit on the Panel, a judge shall be designated from among the alternate judges to sit on the Panel in accordance with the rules prescribed by the Panel.

(d) Rules of procedure shall be promulgated by vote of a majority of the full membership of the Intercircuit Panel and such procedures shall be published before any cases are heard by such Panel.

(e) In the event of the death, resignation, or disability of any judge designated under subsection (a), the active circuit judges of the circuit of which the judge was a member shall fill the vacancy in accordance with the provisions of subsection (a). A judge designated to fill such a vacancy shall be designated to serve for the remainder of the period of his predecessors term.

§ 62. Principal office and sessions

The principal office of the Intercircuit Panel of the United States Courts of Appeals shall be in the District of Columbia, but the Panel may hold court at such times and places within the United States as the Panel may fix by rule.

§ 63. Seal

The Intercircuit Panel of the United States Courts of Appeals shall have a seal which shall be judicially noticed.

* * * * * * *

CHAPTER 41—ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Sec.

* * * * * * *

604. Duties of Director generally.

* * * * * * *

§ 604. Duties of Director generally

(a) The Director shall be the administrative officer of the courts, and under the supervision and direction of the Judicial Conference of the United States, shall:

* * * * * * *

(d) The Director, under the supervision and direction of the conference, shall:

* * * * * * *

(4) prepare and distribute a manual, with annual supplements and periodic revisions, for the use of such officers, which shall set forth their powers and duties, describe all categories of proceedings that may arise before them, and contain such other information as may be required to enable them to discharge their powers and duties promptly, effectively, and impartially[.]*; and*

(5) lay before Congress annually statistical tables and other information which will accurately reflect the business which has come before the Intercircuit Panel of the United States Courts of Appeals.

* * * * * * *

CHAPTER 47—COURTS OF APPEALS

* * * * * * *

CHAPTER 48—INTERCIRCUIT PANEL OF THE UNITED STATES COURTS OF APPPEALS

Sec.
731. Clerk, employees and facilities.
732. Marshal and bailiffs.

§ 731. Clerk, employees and facilities

The clerk of the Court of Appeals for the Federal Circuit shall perform the duties of clerk of the Intercircuit Panel of the United States Courts of Appeals. Clerical assistance and facilities shall be provided to the intercircuit Panel by the Court of Appeals for the Federal Circuit and by the Supreme Court in a manner which is mutually agreeable to the Chief Justice of the United States Supreme Court, the presiding judge of the Intercircuit Panel and the Chief Judge of the Court of Appeals for the Federal Circuit.

§ 732. Marshal and bailiffs

The Intercircuit Panel of the United States Courts of Appeals may request the services of the marshal of the courts of appeals for the judicial district in which the Panel is sitting. The marshal shall attend the Panel at its sessions, take charge of all property of the United States used by the Panel, and perform such other duties as the Panel may direct. The marshal, with the approval of the Panel, may request necessary bailiffs from the court of appeals which such marshal serves. Such bailiffs shall attend the Panel, preserve order, and perform such other necessary duties as the Panel or the marshal may direct.

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CHAPTER 81—SUPREME COURT

Sec.

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1260. Referral to Intercircuit Panel of the United States Courts of Appeals.

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§ 1260. Referral to Intercircuit Panel of the United States Courts of Appeals

(a) The Supreme Court may refer any case in which it has found to exist a conflict with the determination of another circuit of the United States Courts of Appeals to the Intercircuit Panel of the United States Courts of Appeals, before or after granting or denying certiorari, or before or after noting probable jurisdiction of an appeal. The Supreme Court shall direct the Intercircuit Panel of the United States Courts of Appeals to decide any case so referred which is subject to review by appeal, and the Supreme Court may direct the Panel to decide any other case so referred.

(b) Cases in the Panel may be reviewed by the Supreme Court in the same manner as provided in section 1254(1) of this title for cases in the courts of appeals generally.

CHAPTER 82—INTERCIRCUIT PANEL OF THE UNITED STATES COURTS OF APPEALS

Sec.
1271. Jurisdiction.
1272. Finality of decisions.

§ 1271. Jurisdiction.

The Intercircuit Panel of the United States Courts of Appeals shall have jurisdiction of cases referred to the Panel by the Supreme Court.

§ 1272. Finality of decisions

(a) The Intercircuit Panel of the United States Courts of Appeals may deny review in any case referred to the Panel by the Supreme Court which is subject to review by writ of certiorari, unless the Panel is directed by the Supreme Court to decide such case.

(b) Unless modified or overruled by the Supreme Court, decisions of the Intercircuit Panel of the United States Courts of Appeals (other than decisions denying review under subsection (a)) shall be final decisions and shall be binding on all courts of the United States and, with respect to questions arising under the Constitution, laws, or treaties of the United States, on all other courts.

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CHAPTER 123—FEES AND COSTS

Sec.

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[1913. Courts of appeals.]
1913. Courts of appeals; Intercircuit Panel of the United States Courts of Appeals.

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[§ 1913. Courts of appeals

[The fees and costs to be charged and collected in each court of appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and uniform in all the circuits. June 25, 1948, c. 646, 62 Stat. 954.]

§ 1913. Courts of appeals; Intercircuit Panel of the United States Courts of Appeals

The fees and costs to be charged and collected in each court of appeals and in the Intercircuit Panel of the United States Courts of Appeals shall be prescribed from time to time by the Judicial Conference of the United States. Such fees and costs shall be reasonable and, in the case of the courts of appeals, shall be uniform for all such courts.

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CHAPTER 131—RULES OF COURTS

Sec.

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2072. Rules of civil procedure.

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§ 2072. Rules of civil procedure

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States *and of the Intercircuit Panel of the United States Courts of Appeals* in civil actions, including admiralty and maritime cases, and appeals therein, and the practice and procedure in proceedings for the review by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers.

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CHAPTER 133—REVIEW—MISCELLANEOUS PROVISIONS

Sec.

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2106. Determination.

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§ 2106. Determination

The Supreme Court, *the Intercircuit Panel of the United States Courts of Appeals,* or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

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